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TESTIMONY

of

STEVEN MCKINNEY

Before the

G R A N D J U R Y

Impaneled February, 2017

and Convened in

THE NORTHERN DISTRICT OF ALABAMA

Robert S. Vance Federal Building  
1800 Fifth Avenue, North  
Birmingham, Alabama

Testimony May 24, 2017

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Examination Conducted by:

GEORGE A. MARTIN  
ROBIN MARK  
Assistant United States Attorneys  
1801 4th Avenue North  
Birmingham, Alabama

Re: 2016R00620

2:17-cr-00419-AKK-TMP

6/25/18 Jury Trial

GOVT EXHIBIT NO. 262

P R O C E E D I N G S

May 24, 2017

1:04 p.m.

Whereupon,

STEVEN MCKINNEY,

a witness of lawful age, having sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY MR. MARTIN:

Q. Good afternoon.

A. Hi.

Q. Would you state and spell your last name for the Grand Jury, please?

A. My last name is McKinney. (Spelling)  
M-C-K-I-N-N-E-Y.

Q. And your first name?

A. Steve or Steven. (Spelling)  
S-T-E-V-E-N.

Q. Mr. McKinney, before we get started I want to give you some warnings and some rights that witnesses here in the Grand Jury have.

First, you've been placed under oath now, and should you give materially false testimony to the Grand Jury, you would be prosecuted for federal offenses such as perjury of obstruction of justice.

1 Do you understand?

2 A. I do.

3 Q. You also have the right to refuse to  
4 answer any question that you think might  
5 incriminate yourself.

6 If you do answer questions, anything you  
7 say could be used in a subsequent legal proceeding,  
8 and I believe you're represented by counsel today.

9 If at anytime during the questioning you  
10 need to consult with counsel, let us know because  
11 you have the right to do that, and we'll give you a  
12 fair opportunity.

13 Do you understand those --

14 A. I do.

15 Q. Could you give us your address, please?  
16 Your home address.

17 A. I live at 333 Turnberry Road in  
18 Birmingham. That's kind of south of town.

19 Q. And can you give us your work and home  
20 phone number and cellphone number too, please?

21 A. Okay. My work phone number is area code  
22 205-226-3496. My home phone number is area code  
23 205-991-9310, and my cellphone is area code 205-  
24 790-4871.

25 Q. Do you have a separate cellphone for

1 work and personal or do you use the same one?

2 A. I use the same one.

3 Q. How about email addresses? What email  
4 addresses do you use?

5 A. It's smckinney. (Spelling)  
6 S-M-C-K-I-N-N-E-Y @balch (spelling) B-A-L-C-H .com.

7 Q. Do you have a personal email?

8 A. I do not.

9 Q. What's your job, Mr. McKinney?

10 A. I'm an attorney.

11 Q. And where do you work?

12 A. Balch & Bingham. It's a law firm here  
13 in town.

14 Q. How long have you worked there?

15 A. It will be 30 -- started in '79. So it  
16 will be 38 years next week.

17 Q. Have you had other legal jobs or have  
18 you worked at Balch your entire career?

19 A. I've worked at Balch Bingham the whole  
20 time.

21 Q. Where did you go to law school?

22 A. The University of Illinois, which is in  
23 Champaign-Urbana, Illinois.

24 Q. And how about undergrad?

25 A. I went to the University of Mississippi.

1 Q. And what was your undergraduate degree  
2 in?

3 A. Uh

4 Q. Has it been that long?

5 A. Yeah. My major, my degree was a  
6 bachelor of arts in liberal arts, and my major was  
7 in political science and economics as a double  
8 major, and I have a minor in English.

9 Q. What is the focus of your practice at  
10 Balch & Bingham?

11 A. I'm an environmental lawyer.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. And do you have some sort of supervisory  
16 role [REDACTED]

17 A. Yes, in the sense that I am the head of  
18 the environmental section [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 I assist [REDACTED] the partners and  
9 all the lawyers in my group. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 They may come to me for advice or  
13 assistance. Something of a mentor, you might say,  
14 to them.

15 I may help them really with anything  
16 that they are doing to serve a client or to improve  
17 themselves as a lawyer. They would ask me to be  
18 involved and help them in some way.

19 For example, if a lawyer in my group  
20 believes that going to a particular seminar, you  
21 know, would be good for them to help them be a  
22 better lawyer, they would come to me and we would  
23 talk about that, and I would have input into, you  
24 know, whether they should go to that seminar or  
25 not, but it's that kind of thing.

1 Q. How big is the environmental group at  
2 Balch?

3 A. We have more than 20 lawyers in the  
4 environmental group, and I'm trying to remember the  
5 exact number. I can't remember exactly, but we've  
6 got 22, 23, maybe 24 lawyers in that group.

7 They are in Atlanta, Washington, D.C.,  
8 Birmingham, Gulfport, Mississippi, and I should  
9 know the exact number, but I don't have it on the  
10 tip of my tongue.

11 Q. [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED] [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 Q. Are you familiar with the Environmental  
9 Protection Agency's, EPA's actions in North  
10 Birmingham in the last few years?

11 A. I am.

12 Q. Can you sort of generally describe the  
13 history of EPA's actions in North Birmingham for  
14 the Grand Jury, please?

15 A. Sure. Let me think a bit because it  
16 might be a long story.

17 Generally several years ago, perhaps  
18 five, maybe six years ago, maybe even a little  
19 longer, US EPA had a project going on in North  
20 Birmingham that was being handled with the US EPA  
21 and there was cooperation from a local company  
22 under a federal law called RCRA.

23 It stands for Resource Conservation  
24 Recovery Act, and that federal law is a law that  
25 governs and directs parties, whoever they are, how



1       they should handle hazardous waste that they  
2       generate or somehow come to possess, and that  
3       project was going on under RCRA in North Birmingham  
4       with regard to a particular company and their  
5       property.

6       Q.               The particular company was Walter Coke?  
7       Is that who you're referring to?

8       A.               I believe so, Mr. Martin. That  
9       company's name has changed a couple of times.  
10      They've been combined with other companies, but I  
11      believe what people refer to as the Walter Coke  
12      property, yes.

13                   And US EPA was involved in that on that  
14      basis, and then they decided to change the focus of  
15      their involvement with regard to that property to  
16      approach that situation under another federal  
17      statute.

18                   It also deals with hazardous waste, but  
19      it deals with it in a different way, and that  
20      statute is called CERCLA. That's (spelling)  
21      C-E-R-C-L-A. It's nickname is Superfund.

22                   That statute is much broader than the  
23      previous one I mentioned, RCRA, and it deals with  
24      contaminated land in a different way.

25                   It gives EPA, US EPA a more power

1 authority. Broader power and authority to do  
2 things, and when they changed their focus and  
3 starting using the Superfund statute, one of the  
4 things that they are allowed to do under Superfund  
5 is to deal with parties that they believe are  
6 somehow responsible for the contamination being on  
7 the land.

8 That notion of being responsible is very  
9 broadly stated. It is a broadly stated statute,  
10 and it gives US EPA broad powers.

11 In this case when they began handling  
12 the matter as a Superfund matter, they broadened  
13 their activity off of the property in question into  
14 you might say adjoining property in the  
15 neighborhoods near or around that property, and  
16 they began treating that whole area as a Superfund  
17 site.

18 There is a lot of process that goes on  
19 in getting to that point, but they began treating  
20 it like a Superfund site.

21 One of the things that happens at a  
22 Superfund site is US EPA has money they can use to  
23 do things to deal with the contamination they  
24 found, but the statute also authorizes US EPA to  
25 try to hold other people responsible for the costs

1 of cleaning up that property.

2 You know, it can be a very expensive  
3 proposition to be involved in one of these sites to  
4 do what EPA wants to do to address the  
5 contamination.

6 So it's a very serious matter for  
7 someone to -- some entity, person, business,  
8 company, university, city, you know, county, any  
9 government, United States, can be a party under  
10 Superfund.

11 It's a very serious matter to be held  
12 responsible for doing -- for paying for what US EPA  
13 believes ought to be done.

14 So it leads to a lot of serious  
15 consideration when someone thinks they might be  
16 responsible, or is told that someone else thinks  
17 they might be responsible.

18 Because this statute is so broad, you  
19 can have someone -- let's just say someone is  
20 responsible. Maybe it's their property even. That  
21 person can turn around and say, "Well, I believe  
22 that there is several other parties who are also  
23 responsible, and I want to bring them into this  
24 activity."

25 There may be someone outside of that

1 process and maybe US EPA would say we believe that  
2 other people are responsible and bring them into  
3 the situation.

4 So that's typical of a Superfund  
5 situation, and that's what happened in North  
6 Birmingham.

7 US EPA began to ask themselves is anyone  
8 else responsible for this, and there were several.  
9 Over time there were several parties that US EPA  
10 approached and said, "We think you might be  
11 responsible for this."

12 That led to engagement with them.  
13 Conversations with them and various people. Really  
14 all the people they spoke to that way denied  
15 responsibility and said, "We're not responsible for  
16 this."

17 US EPA continued their activity. The  
18 activity they thought was appropriate for  
19 addressing the situation and continued spending  
20 money.

21 In various episodes approached those  
22 parties they thought that they could hold  
23 responsible for the situation and said, "Don't you  
24 think you're responsible," and although I wasn't  
25 involved in all of the parties, the parties I

1 represented, we consistently told the US EPA we are  
2 not responsible for this. We had nothing to do  
3 with it, and if you have a view otherwise, please  
4 tell us, you know, why and show us the reasons.  
5 Tell us the reasons. Show us the evidence that you  
6 have that would say we are somehow responsible for  
7 this.

8 So we engaged in that kind of  
9 discussion. US EPA continued their work. They  
10 continue it even today doing what they think they  
11 need to do out there to address contaminated land,  
12 and that was the North Birmingham site.

13 Q. We've heard it referred to in a couple  
14 of different ways. Were you referring to the 35th  
15 Avenue Superfund site, or were you referring to  
16 both that site plus the Tarrant Inglenook area?

17 A. I've been referring just now to just the  
18 North Birmingham site. The 35th Avenue site.

19 Another chapter in that story is that  
20 there were -- it was an environmental group that  
21 was involved in the North Birmingham site.

22 You know, this is a very public process.  
23 People are allowed to participate and express their  
24 views and things.

25 This environmental group --

1 Q. What was the name of the group?

2 A. The name of the group is (spelling)  
3 G-A-S-P. I suppose they call themselves GASP. It  
4 stands for -- GASP stands for something else. I'm  
5 not sure exactly what it is, but GASP would be the  
6 name of the letters and what they spell.

7 The environmental group was very  
8 adverse. You haven't asked me, but I'll say my  
9 client in this matter was ABC Coke. A coke  
10 manufacturer over in the Tarrant area.

11 Q. Which is a division of Drummond?

12 A. It is. It is a subsidiary or division.  
13 I'm not sure which the appropriate nomenclature  
14 would be of Drummond Company.

15 This environmental group was very  
16 adverse to ABC Coke, and they kind of made it very  
17 obvious by the things they put on their website and  
18 the stuff that they published, and they were very  
19 adverse to the coke plant.

20 You know, at least in terms of public  
21 activity they filed a petition with US EPA that in  
22 summary said we think that you should take this  
23 view that you have about North Birmingham and the  
24 activity that you are engaging in in North  
25 Birmingham, we think you should take this and just

1 expand it to include the City of Tarrant and some  
2 neighborhoods of Birmingham. A very large area.

3 They petitioned EPA to do that, and  
4 that's allowed under the statute that I told you  
5 about; the Superfund statute.

6 So there was a petition filed and US EPA  
7 had an obligation to respond to the petition. So  
8 they went about their business of preparing a  
9 response to the petition which involves taking  
10 public comments and such.

11 So my client, ABC Coke is located in  
12 that area, and in light of GASP's previous position  
13 opposed to ABC Coke it was pretty apparent, and you  
14 didn't have to guess, they were saying it pretty  
15 plainly, that this petition was really about trying  
16 to involve, to pull in ABC Coke into this North  
17 Birmingham situation.

18 One of the things that, you know, was  
19 always something that we would say to US EPA is,  
20 you know, our plant that you're talking about is a  
21 long distance from where you are. It's almost two  
22 miles away from where this is going on.

23 How is it that you think we had  
24 something to do with the contamination that you're  
25 focused on?

1           So this was kind of a response to that  
2     in the sense well, we'll just expand the site to  
3     include the neighborhood that you're in.

4           So that petition was being processed,  
5     and US EPA was responding to it. There is several  
6     steps in that.

7           The first step was to do kind of a  
8     review of the situation just based on paper. You  
9     know, what's available in the records that would  
10    tell us anything about this site.

11          They came back after doing that, and  
12    they said well we're going to go to the next step,  
13    which is a little more involved.

14          It's beyond the paper. It actually goes  
15    out in this step -- one actually goes out onto the  
16    property in question and begins to examine it and  
17    test for things and do a physical examination of  
18    the area to enhance the review you've just done  
19    based on records and things.

20          So US EPA did that, and at the end of  
21    that they reached a decision that they would not go  
22    any farther with that petition. It would not  
23    expand the Superfund site or create a new Superfund  
24    site in that City of Tarrant area and the related  
25    neighborhoods of Birmingham.



1                   That's pretty much where we are today.  
2                   It's a very summary form, but that's pretty much  
3                   where we are today.

4                   Q.                   What's the timing of this action? Did  
5                   it begin roughly in 2014?

6                   A.                   I'm a little fuzzy on exactly when  
7                   things happened. This has been going on for a  
8                   number of years.

9                   The petition that I told you about, you  
10                  know, I can't be sure. You know, this is 2017.  
11                  It's been going two or three years, but I don't  
12                  remember a date specifically.

13                  Q.                   Maybe we'll look at some documents in a  
14                  bit that will refresh your recollection of the  
15                  date.

16                  First I want to ask you as part of this,  
17                  and I didn't hear this in your explanation, was  
18                  there some effort by EPA to put the North  
19                  Birmingham site on the National Priorities List?

20                  A.                   There was.

21                  Q.                   Can you briefly explain that?

22                  A.                   Under the Superfund statute there is a  
23                  program, I'll call it, whereby US EPA is both  
24                  authorized and somewhat expected to identify,  
25                  evaluate and list the most serious contaminated

1 areas that are Superfund sites.

2 You know, they get involved, and they  
3 make a decision. Should we declare this to be a  
4 Superfund site, and they had done that in North  
5 Birmingham.

6 Then this process is kind of after that,  
7 and it's a process that says we're going to have a  
8 list in the United States. We're going to have a  
9 list of the most serious Superfund sites that are  
10 out there.

11 It's called the National Priorities List  
12 or the NPL, and it dates back to the beginning of  
13 Superfund, and a little bit of history.

14 When Superfund was adopted, it was a  
15 very bold and broad and very strong statute, and it  
16 was adopted in an environment where we had some  
17 really, really big contaminated land problems.

18 And so Congress acted with a broad  
19 sweeping statute that authorized EPA to get out  
20 there and deal with these things.

21 And that was in 1980. So we're 37 years  
22 from that, and this NPL process was a part of that  
23 because there were many different places that might  
24 qualify as a Superfund site, and EPA would be  
25 authorized to do things about that site.

1           Other parties would be authorized to do  
2 things about it and to engage with other people to  
3 get things done, but it might not be the highest  
4 priority that the US EPA would have, and  
5 particularly with regard to spending money from the  
6 Superfund.

7           The nickname Superfund comes from the  
8 reality that this statute also imposed a tax on a  
9 barrel of oil to collect money to create a special  
10 fund so that EPA would have money to do what they  
11 needed to do when they found a site they wanted to  
12 do something with, but there is not enough money.

13           So issues of priorities arose and the  
14 NPL was a way of saying well US EPA you should  
15 create a list of the most -- the highest priority  
16 sites.

17           That was mid-1980. Come forward through  
18 time and you know, we have done a lot of cleanup.  
19 The sites that are being handled today are somewhat  
20 different than the sites that were being handled  
21 back then, but the process is still there. The NPL  
22 process is still there.

23           In this case the US EPA issued a  
24 proposal, and EPA being an agency, a lot of times  
25 they act through what we call a notice and comment

1 rule making process, and that's them saying we  
2 think we should do this, but we're going to receive  
3 comments from the public about this, and then we'll  
4 decide after we consider those comments.

5 And so the NPL process is one of those  
6 processes. So they issued a proposal to list the  
7 North Birmingham or the 35th Avenue Superfund site  
8 on the National Priorities List.

9 The public had the opportunity to file  
10 comments, and then US EPA considered those  
11 comments, and they have not decided.

12 I don't know -- I'm trying to think. I  
13 believe they have simply not decided. I don't  
14 believe they've said we're not going to do it. I  
15 believe they simply haven't decided the issue,  
16 which is common, you know. That happens.

17 Q. So what difference does it make if a  
18 Superfund site is on the National Priorities List?  
19 And primarily focus on in terms of money spent by  
20 the federal and state governments and the potential  
21 effect on responsible parties.

22 A. Usually US EPA will propose a site for  
23 listing because doing so gives them access to more  
24 of the Superfund -- the available Superfund money.

25 That money is in short supply. So

1 people have to make decisions on how they're going  
2 to allocate it.

3 So usually listing the site will give US  
4 EPA access to more of the Superfund money from a  
5 prospective of a private party.

6 Q. Talk about the state. What is the  
7 potential effect on the State of Alabama if the  
8 35th Avenue site is listed on the NPL?

9 A. Well, first of all the state is a party  
10 like anybody else, and they're authorized to  
11 participate in this notice and comment process and  
12 file their comments to see what they think, and  
13 they make a statement of what they think.

14 In terms of the state, Mr. Martin, I'm a  
15 little fuzzy on this. So, you know, bear with me.

16 When a site gets listed, there are by  
17 practice and habit opportunities for the state  
18 where the site is located to participate in some  
19 form of management of the site.

20 I'm a little fuzzy on exactly how, you  
21 know, that works in the sense of relating to money.  
22 I have heard that that process of the state being  
23 involved in a listed site involves the state  
24 putting up some matching funds. Some state funds  
25 that the federal government matches, but I don't

1 know that myself.

2 Q. I read in the statute CERCLA that you  
3 mentioned where the state could be responsible for  
4 as much as 10% of the cleanup.

5 Is that what you're referring to?

6 A. I have heard that, Mr. Martin, but I  
7 don't know that myself.

8 I've never represented the state in a  
9 Superfund matter, and I've not had the opportunity  
10 for that issue to be something I needed to study.

11 Q. And you were going to tell us about the  
12 potential effect on private parties of a listing on  
13 the NPL.

14 A. Well in my judgment it doesn't affect  
15 private parties in terms of, you know, how you  
16 decide whether someone is responsible or not.

17 It doesn't change the way the law  
18 applies to the private parties. It would, however,  
19 you know, mean that if US EPA is seeing this  
20 particular site as one the nation's top priorities,  
21 it would mean that there would be more activity to  
22 address the site or manage the site or whatever.

23 If you were a party who was responsible,  
24 and remember -- sorry, I shouldn't say remember. I  
25 haven't told you this, but oftentimes the question

1 of who is responsible as a private party is known  
2 early.

3 I mean, you know, the issue of well who  
4 are the responsible parties for the site oftentimes  
5 is determined.

6 I've been involved in sites where at the  
7 earliest states the private parties would agree  
8 that they are responsible for the site.

9 So they get together. The law makes  
10 them responsible in a way we call joint and  
11 several. It's like you're all in this together,  
12 and the whole issue of how you divided up the  
13 responsibility is going to be your business.

14 The statute compels these people then to  
15 get together and kind of try to kind of work  
16 together and try to work with US EPA to get this  
17 addressed or handled, and then, you know, kind of  
18 work out amongst them the financial responsibility

19 So oftentimes that's the case, and it's  
20 not the case here, but oftentimes it is. So in  
21 that NPL process those parties who are also invited  
22 to participate like anyone else and provide written  
23 comments, those parties would do so knowing that,  
24 hey, we're going to be doing this. So let's get  
25 involved and provide our view of what this site is

1       like and what needs to be done, et cetera.

2                       So, I don't know if that answers your  
3       question.

4       Q.               Well, just to go back to something you  
5       mentioned earlier. You said that, and we'll talk  
6       specifically about the 35th Avenue site, that is  
7       that's a Superfund site and is listed on the NPL,  
8       and if Tarrant and Inglenook had been also  
9       designated a Superfund site, I think you used the  
10      phrase, that could be an expensive proposition for  
11      the parties who are responsible for the pollution.

12                      Is that correct?

13      A.               Yes.

14      Q.               That's what you meant?

15      A.               It would be an expensive proposition for  
16      US EPA, and for anyone who is responsible for the  
17      site.

18      Q.               Just to make it about this case, your  
19      client was ABC Coke. If ABC Coke was held  
20      responsible for the pollution in those areas that  
21      the EPA was looking at, it was going to cost them a  
22      lot of money potentially, right?

23      A.               If it were held responsible, yeah. US  
24      EPA has already spent a lot of money in North  
25      Birmingham.



1           So if any party who was ultimately held  
2 responsible, it would be an expensive proposition.

3           A.           Because EPA could require a potentially  
4 responsible party to pay for the cost of the  
5 cleanup, correct?

6           A.           If they were determined to be  
7 responsible, yeah, and you know, it's not uncommon  
8 for US EPA to have a view that someone is  
9 potentially responsible address them to that point  
10 and say we think -- and for that party to say we  
11 think you're wrong and there to be a dispute over  
12 that.

13          Q.           And if there is a dispute that EPA or  
14 the parties cannot work out, does that end up in  
15 court?

16          A.           It does.

17          [REDACTED]  
18          [REDACTED]  
19          [REDACTED]  
20          [REDACTED]

21                        Would you agree with that? That at  
22 least it's an uphill climb to avoid liability if it  
23 ends up in court.

24          A.           [REDACTED]  
25          [REDACTED] but I don't think -- you know, if it ends up

1 in court I don't think the deck is stacked against  
2 anybody.

3 I mean, the court is the court, and you  
4 have the opportunity to defend yourself.

5 What may be the problem -- it's an  
6 intricate kind of problem in Superfund that makes  
7 it challenging if you want to dispute US EPA, and  
8 many people do.

9 I've been involved in disputing those  
10 things. If you want to dispute US EPA's position  
11 that you're potentially responsible, it can be  
12 challenging because remember, this statute was  
13 written at a day in time.

14 Some of you I can tell are maybe as old  
15 as I am, and the news was filled with stories of a  
16 place called Love Canal, and it was on the news  
17 every night. It was a terrible situation.

18 Those were the motive forces when  
19 Congress said we got to do something, and they  
20 wrote this statute to be very, very strong in favor  
21 of US EPA to give US EPA lots of authority to get  
22 things done.

23 Because many times, you know, these  
24 sites involve contamination that occurred over a  
25 long period of time. Maybe the parties have

1 changed. The parties have gone or some of the  
2 business.

3 US EPA said that person is responsible,  
4 but they're gone. We're never going to get them to  
5 help pay.

6 They wrote this statute to be as broad  
7 as I described it because of that situation. So  
8 there have been lots of court cases about how  
9 that's supposed to work and whether it's fair or  
10 not and such.

11 But I think what he may be talking  
12 about, Mr. Martin, is the fact that the statute is  
13 itself -- it gives EPA lots of authority, and if  
14 you want to dispute them about anything, and it's  
15 not just the idea of who is responsible, but it  
16 might be what's the nature of this site.

17 What's the problem at this site? How  
18 should that problem be addressed? When should it  
19 be addressed?

20 All of those things. If you're a  
21 responsible party for the site, you know, you're  
22 interested in those things because those things  
23 have cost implications, or they have, you know,  
24 implications for public health, and you're  
25 involved. If you're involved, you want to make

1       sure it's done right.

2               So you have views about that, but the  
3       statute gives EPA really strong authority that  
4       you're going to do it their way.

5               So if you're going to dispute those  
6       things, any of those things, it's a process that's  
7       extensive and it's expensive because you're going  
8       to be engaged for a long time, and it's a very  
9       detailed process and things like that.

10       [REDACTED]

11       [REDACTED]

12       Q.               So as a lawyer for a potential  
13       responsible party on the 35th Avenue site, was it  
14       important -- was it your strategy, part of your  
15       strategy to try and head this off?

16               The designation on the NPL or expanding  
17       the Superfund site to include Tarrant and  
18       surrounding areas, was it an important part of your  
19       strategy to try and nip this in the bud, so to  
20       speak, to not get to the point where you are in  
21       court disputing EPA?

22       A.               Well, first we had made it very clear to  
23       US EPA on behalf of our client, ABC Coke, that they  
24       were not responsible for this site.

25               We had engaged with them several

1 different ways and several times at their  
2 invitation, and these were meetings, you know.

3 They would invite you to have a meeting  
4 and kind of like, you know, this is not a fun  
5 meeting but it's a meeting.

6 They would state their case. So we  
7 think you might be a potential responsible party  
8 here, and we would respond.

9 So we had made it very clear that we did  
10 not believe ABC Coke was responsible in any way,  
11 and that was the first thing.

12 The second thing is recognizing, you  
13 know, what I was just talking about about how EPA  
14 has a lot of authority to do things the way they  
15 want to do them.

16 It is not uncommon at all, and it is  
17 what happened here, that if you think that somehow  
18 some day you might get held responsible for this,  
19 then it is in your best interest to make sure that  
20 whatever is done is done the best it can be done as  
21 far as you're concerned.

22 So participating in what EPA was  
23 proposing to do makes a lot of sense if you can  
24 point out to them that well, you know, you're  
25 thinking about doing this particular activity here;

1 but we're aware of other places where you did this  
2 differently and these were less expensive. Why  
3 don't you consider this?

4 So participating to make sure that what  
5 they end up deciding to do is the best course of  
6 action and right and based on the facts, that's  
7 what we do.

8 I say we in the sense of that's what  
9 most parties do. You know, done it many times, and  
10 that's what was going on with ABC Coke.

11 Q. So part of your strategy was to meet  
12 with EPA and try and convince them of your point of  
13 view, correct?

14 A. Correct.

15 Q. Generally speaking, what were the other  
16 parts of your strategy in addressing these issues  
17 that you were facing?

18 A. Well, with regard to the 35th Avenue  
19 site, which as I mentioned, is at some distance  
20 from the ABC Coke plant.

21 We essentially engaged with EPA to talk  
22 about their suggestion that we might be a  
23 potentially responsible party, and to say that  
24 we're not.

25 Then I think maybe the fair thing to do

1 would be to say that just after that just to  
2 monitor that site. Keep up with what they were  
3 doing, and be informed about how they were going  
4 about business and how they were making decisions.  
5 How they were evaluating the situation. We tried  
6 to keep up with the current status of the site.

7 I think then when they proposed to list  
8 it on the National Priorities List, based on what  
9 we understood about the site, and based on what we  
10 understand about the process for evaluating sites  
11 for NPL purposes, we decided that they were  
12 exaggerating the condition of the site as it  
13 relates to the NPL ranking process.

14 It's a process that is -- I mean, it's  
15 actually a ranking. It's like you score the site.  
16 So many points for this and so many points for  
17 that.

18 So they were engaged in evaluating the  
19 site and this kind of a scoring sense, and we  
20 believe that they had not looked at it in the right  
21 sense; that they had made mistakes in the way they  
22 evaluated and scored the site.

23 So we participated to make that point of  
24 view clear.

25 Q. And as part of your strategy did you

1 have contact with state and federal elected  
2 officials to try and convince them to support your  
3 view of the issues?

4 A. Yes.

5 Q. And did you have contact with the  
6 Alabama Department of Environmental Management to  
7 discuss the issues?

8 A. I'm trying to remember. Let me say. I  
9 did not have any contact. That's why I'm  
10 hesitating because I'm trying to remember, you  
11 know, what contact may have been had. I did not  
12 have any contact.

13 Q. And that's one of the primary focuses of  
14 your testimony today is your involvement -- your  
15 personal involvement in the carrying out of this  
16 strategy and representing ABC Coke.

17 How would you describe that to the Grand  
18 Jury? Your involvement?

19 A. My personal involvement?

20 Q. Yes.

21 A. Let me think about that. The best way  
22 to describe that.

23 Well, first as a mentor. If you will as  
24 the section head, I would help any lawyer. ■

25



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [REDACTED]

13           There were some situations, some parts  
14 of this representation, and I'm going to try to  
15 answer in the sense of representing ABC Coke in  
16 this matter.

17           There were some parts of this  
18 representation where I was directly involved, and  
19 I'll give you an example.

20           In this process that US EPA goes through  
21 in evaluating possible responsible parties, they  
22 have the right under the statute to ask people to  
23 provide information, and it's a legal obligation.

24           So they use that authority in Superfund,  
25 and they may have some ideas. Maybe they see some

1       contamination.

2               They say this looks like it might have  
3       come from, you know, Joe's Body Shop or whatever,  
4       and they have the authority under the statute to  
5       send that party a letter saying we need information  
6       from you, and please supply the following. Answer  
7       the following questions and supply the following  
8       documents.

9               Well, they did that in this case, and  
10       they sent such requests for information to ABC  
11       Coke, and I was directly involved in helping that  
12       client answer those questions. The questions from  
13       US EPA to ABC Coke.

14              I say directly involved. Like I helped  
15       advise the client. Helped gather information.  
16       Prepare the responses. Send the material in. So I  
17       was directly involved in that.

18              There were times -- I remember times  
19       when, you know, the client wanted to talk about how  
20       things are going. What are we doing? What are we  
21       going to do next?

22              I would participate in those  
23       conversations with like on a conference call or  
24       maybe even in person. So there were some times  
25       like that.

1 Q. [REDACTED]

2 [REDACTED]

3 [REDACTED] [REDACTED]

4 Q. Who were your primary client contacts?

5 A. A man named Blake Andrews is a lawyer  
6 who works directly for Drummond. Referred to often  
7 as an in-house lawyer.

8 Blake -- I don't know his proper title,  
9 but he was the Drummond lawyer responsible for  
10 environmental matters. So he was the principal  
11 contact.

12 There were times particularly when  
13 information was needed to respond maybe to one of  
14 these letters I told you about that I would deal  
15 with the plant manager at the plant or other  
16 personnel at the plant.

17 Q. [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

- 1 Q. [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED] [REDACTED]
- 7 [REDACTED] [REDACTED] [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED] [REDACTED]
- 10 [REDACTED] [REDACTED]
- 11 [REDACTED] [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED] [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED] [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED] [REDACTED]
- 22 A. [REDACTED]
- 23 [REDACTED] [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED]

4 A. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. [REDACTED] would it be part of the smart thing  
12 to do to communicate to ADEM officials what your  
13 position of the matter was?

14 A. Sure.

15 (Whereupon, the above-referred  
16 document was marked Grand Jury  
17 Exhibit 2 for identification.)

18 Q. Let me show you what has been marked as  
19 Grand Jury 2 McKinney and ask you again to review  
20 that and let me know when you're finished.

21 A. Okay.

22 Q. Start at the bottom and sort of go up  
23 and describe for the Grand Jury what that first  
24 email in that string is.

25 A. Okay. This paper is a paper copy of an

1 email string, and the first email in the string is  
2 an email from Lance LeFleur, and Lance is the  
3 Director of the Alabama Department of Environmental  
4 Management. He's the top person there.

5 It is dated September 16, 2014. It is  
6 addressed to one, two, three people at US EPA and  
7 the three people that are addressed is Gina  
8 McCarthy, Heather McTeer, and Gwen Fleming. Those  
9 three people are officials at US EPA.

10 Gina McCarthy was the administrator.  
11 The top official at US EPA for the whole nation.

12 Heather McTeer-Toney was the -- I  
13 believe at this time -- I'm not sure, but I believe  
14 at this time Heather McTeer-Toney was the  
15 administrator for Region IV of the country, which  
16 involves Alabama, Georgia and a number of other --  
17 I think it's eight states. She was the regional  
18 administrator of EPA over that area.

19 Then Gwen Keyes Fleming had been the  
20 regional administrator of Region IV, and she had  
21 gone to Washington, D.C. to be the Chief of Staff  
22 for Gina McCarthy, the US EPA administrator.

23 Those are the three addresses. The  
24 subject is the 35th Avenue Birmingham NPL Listing.

25 Q. Just generally, and you don't have to

1 read it, is it true that that email is notifying  
2 ADEM. Mr. LeFleur is notifying EPA that the State  
3 of Alabama objects to the 35th Avenue site being  
4 listed on the NPL?

5 A. It does.

6 Q. And what is the date and time of that  
7 email?

8 A. It's September 16, 2014. At 12:43 p.m.

9 Q. Move up to the next email in that string  
10 and tell us what that is.

11 A. The next email in that string is from  
12 Lance LeFleur. It is to the same people. Well,  
13 both of them have a carbon copy to Governor  
14 Bentley.

15 I'm not sure. It's doesn't make -- it's  
16 like the same header. It's to Gina McCarthy,  
17 Heather McTeer, Gwen Keyes Fleming. It's the same  
18 subject. It's 12:46. I'm not sure what that is.  
19 It looks like the same header on the same email.

20 Q. But it says CC: Governor Bentley?

21 A. Correct, as does the first one.

22 Q. And what is the date and time of the  
23 second email?

24 A. It's September 16, 2014 at 12:46 p.m.

25 Q. And how does that time compare to the



1 time of the first one?

2 A. Three minutes later. So it looks  
3 like -- well, I'm sorry.

4 Q. Okay. Then the top email in that  
5 stream, tell me about that.

6 A. Well, it's not the top one. The next  
7 one up.

8 Q. Describe the next one up.

9 A. So the next one up is from Lance  
10 LeFleur. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] [REDACTED]

14 It looks like this is forwarding this  
15 email string.

16 Q. What is the time on that particular  
17 email?

18 A. The time is 12:49 p.m.

19 Q. How does that compare to the previous  
20 two?

21 A. It's six minutes after the very first  
22 one and three minutes after the second one.

23 Q. So my question is why do you think that  
24 Mr. LeFleur would forward an email to you and  
25 others three minutes after he forwarded it to the

1 governor, and three minutes before that he had  
2 forwarded it to ADEM?

3 So it went to EPA. Three minutes later  
4 it went to the governor and three minutes later it  
5 went to you.

6 Can you explain that to us?

7 A. Sure. Lance -- of course first of all,  
8 Lance and I have worked together for a very long  
9 time. I actually was his lawyer in the BP oil  
10 spill problem. So we have a personal relationship.

11 Because of that Lance would have been  
12 aware and is aware that our firm represents  
13 Drummond and ABC Coke.

14 So I can't read his mind or anything,  
15 but it makes sense to me that when he did something  
16 like this that affected a client that he knows our  
17 firm represents, and he sees me as the leader of  
18 the environmental section at our firm, it would  
19 make sense to him that he would say well, okay, I'm  
20 doing -- saying something about a Balch Bingham  
21 client in the environmental world, I'm going to go  
22 ahead and let Steve know what I've done.

23 This is a public email. I mean, you  
24 know, sending something to US EPA is not  
25 confidential.

Q. And had Balch & Bingham through you or Mr. Gilbert or someone else communicated to Mr. LeFleur that this was an important issue to Balch and its clients?

A. I'm trying to remember whether I had any conversations with Lance about it, and I can't actually remember, or I don't remember having any conversations with him about it personally. Me and him.

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED] [REDACTED] [REDACTED]
- 10 [REDACTED]
- 11 Q. [REDACTED]
- 12 [REDACTED] [REDACTED] [REDACTED]
- 13 [REDACTED] [REDACTED]
- 14 [REDACTED]
- 15 [REDACTED] [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED] [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED] [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED] [REDACTED] [REDACTED]
- 25 [REDACTED] [REDACTED]

1 [REDACTED]

2 Q. You mentioned that you were friends with  
3 Mr. LeFleur because you've done business in the  
4 past, and you've known him a long time, correct?

5 A. That's right.

6 Q. So it makes sense to me, and I'm not  
7 putting words in your mouth, but it just seems to  
8 make sense that if you have a client that you're  
9 representing on a very important issue that could  
10 cost them lots of money, that you might call on  
11 your friend to discuss that because he's head of  
12 ADEM and has some input into these issues.

13 So it makes sense that you would have  
14 talked to him, even though you don't remember maybe  
15 specific conversations.

16 A. Oh, absolutely.

17 Q. Do you agree that you would have most  
18 likely talked with him about the issues in North  
19 Birmingham?

20 A. Yes. I mean and, of course, seeing a  
21 document that would refresh my recollection  
22 certainly, but I would have done that with any  
23 director of ADEM.

24 I mean, you know, it's kind of what we  
25 do is work with government officials. You know, I

1 met with EPA. I met with the regional Superfund  
2 director trying to address these issues.

3 We do that trying to work out problems.  
4 Trying to learn information. Trying to, you know,  
5 build consensus about how to deal with something.  
6 We do that all the time.

7 Q. Because if in this particular situation  
8 if ADEM took the same position that Balch and  
9 Drummond were taking in regards to North  
10 Birmingham, that would help your cause in some way?

11 A. Well, Mr. Martin, it's deeper than that.  
12 I mean, these are complicated matters, and so we're  
13 always talking to other people trying to -- you  
14 know, if they've got a point of view, I want to  
15 know what it is. I want to understand it.

16 They may know something that will help  
17 me make a better decision. You know, when you're  
18 dealing with government agencies, and there are  
19 people involved, many times they have a very deep  
20 knowledge of a situation.

21 So talking with people about a problem  
22 is a key way to serve your client by getting  
23 information, communicating information trying to  
24 work through problems.

25 So, you know, we do that as a part of

what we do representing clients.

Q. The last part of your answer touches on my next question, and that is in all of these conversations you had with Mr. LeFleur or US EPA, you're representing your client?

A. Not always. I mean, there are situations where, you know, we're having conversations about a problem that really doesn't have a client involved.

Q. Let's keep it to the North Birmingham issue just to save some time here.

In your conversations with ADEM and EPA regarding North Birmingham you were representing ABC Coke, and I imagine you billed them for the time you spent engaged in those conversations, correct?

A. Yes.

Q. In conversations you may have had [REDACTED]  
[REDACTED] with ADEM are you  
aware of whether or not discussions were had about  
Balch's strategy in addressing the issues in North  
Birmingham?

A. I don't know what you mean by strategy.

Q. Balch had a strategy for how to best represent ABC Coke in relation to these issues

1 created by the EPA in North Birmingham, correct?

2 A. Yes.

3 Q. In discussions that Balch may have had  
4 with ADEM do you know whether or not that strategy  
5 was discussed with ADEM officials?

6 A. I do not. I do not know whether it was  
7 discussed with them, but when you speak of  
8 strategy, it sounds to me like something that we  
9 wouldn't have discussed with someone else because  
10 strategy is a very detailed -- you know, it's a  
11 very involved kind of -- you know, it's not  
12 necessarily something that you would have  
13 discussed. People wouldn't have the time for you  
14 to discuss your strategy with them.

15 If you're engaged in a conversation with  
16 somebody about a matter, you would talk to them  
17 about the concerns that you have that they might  
18 know something about.

19 They wouldn't be necessarily interested  
20 in you describing to them all the things that  
21 you're going to do to represent your client in a  
22 particular matter.

23 Q. Did Balch engage in a joint strategy or  
24 to talk about a joint strategy with ADEM to address  
25 these issues?



1       A.           Well, I don't know in the sense that I  
2       don't remember having any conversations like that  
3       on my own.

4                I do know that when we were preparing  
5       our comments on the proposal to list the site on  
6       the NPL, those comments are very extensive. I  
7       don't know how many pages they were, but they might  
8       be 40 or 50 pages long.

9                And they would have sections of the  
10       comments that are focused on legal issues. There  
11       may be sections of the comments focused on  
12       technical issues, and sections of the comments  
13       based on, you know, on what we call record issues.  
14       The facts, so to speak.

15               And there is a lot of work that goes  
16       into that. You know, really digging into those  
17       issues.

18               And it's not uncommon at all when you're  
19       involved in one of these things that you would  
20       share drafts of those comments with other people  
21       because you want them to see what you're saying.

22               If you're saying something that's not  
23       right, you want them to say hey, wait a minute.  
24       You're forgetting so and so or whatever, or why do  
25       you say that, and that's not right.

1 But you're also sharing information with  
2 them. They may be very interested in seeing what  
3 your legal analysis is of a particular issue or a  
4 technical analysis.

5 I mean, an example here is in the NPL  
6 listing proposal in order to score the site, in  
7 order to evaluate the site and give it a score or a  
8 ranking. You have to evaluate it against  
9 something.

10 You know, all property has different  
11 chemical constituencies, you know. Most of us  
12 don't --certainly we hear the word arsenic and we  
13 think that's not a good thing. Arsenic is a  
14 poison, isn't it.

15 Well, you know, you could go out in the  
16 middle of nowhere in Alabama, and you could sample  
17 the soil and find some arsenic. We call that  
18 background. In other words, it naturally occurs,  
19 and it's harmless. It's there. If you measure it,  
20 it's there.

21 So then in this NPL listing there was a  
22 questionable what are you comparing this site  
23 against.

24 Q. Mr. McKinney, I don't mean to cut you  
25 off, but in the interest of time I want to sort of

1 focus here. So if you could, sort of get to your  
2 point a little more succinctly, okay?

3 A. Okay. Well, what I was trying to say is  
4 that there are technical issues. Background was  
5 one of them, you know, and EPA had a view of what  
6 was the background against which you would compare  
7 the site to say whether it's badly contaminated or  
8 not.

9 We thought their view was completely  
10 erroneous and we had a basis for that. We had  
11 studied that subject.

12 So our comments had a lot in there about  
13 what the appropriate background would be, and  
14 that's the kind of information you'd share with  
15 anybody willing to listen.

16 Q. We've heard testimony that as part of  
17 its strategy to address these issues, that Balch &  
18 Bingham had a consulting contract with the Oliver  
19 Robinson Foundation.

20 Are you aware of that?

21 A. I am.

22 Q. Do you know whether that part of the  
23 strategy, the relationship with the Oliver Robinson  
24 Foundation, was discussed with ADEM?

25 A. I did not discuss it. I do not know

1       whether anyone else discussed it.

2       Q.               Do you know Oliver Robinson?

3       A.               I know he was a great basketball player.  
4       I watched him when he played basketball, but I do  
5       not know him. I've never -- to my knowledge, I've  
6       never met him, and I have not talked to him about  
7       this situation.

8                       If I met him, it would have been court  
9       side at a UAB basketball game 30 years ago.

10      Q.               This Grand Jury has heard testimony  
11      about that contract, and what we want to know today  
12      is your role or knowledge of that contract.

13                      So can you first just generally describe  
14      what you know about the contract and when you  
15      obtained knowledge of it?

16      A.               Sure. I learned about the decision to  
17      hire the Oliver Robinson Foundation after that  
18      decision had been reached, and I'm trying to think  
19      about the contract whether there is any difference.

20                      I don't know if a contract existed at  
21      that time when I first learned about it -- about  
22      the decision to hire them, or whether the contract  
23      came later; [REDACTED]

24      [REDACTED]

25      [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q. So after the fact, fair to say?

5 A. After the decision to hire them, yes.

6 Q. Can you give us a time frame?

7 A. Well, I can't in the sense that I don't  
8 remember, but I would say go to the date of the  
9 contract and probably back up some from that; but I  
10 don't remember when the time frame was.

11 Q. So I take it from your answer, that you  
12 did not participate in any meetings or negotiations  
13 leading up to the contract?

14 A. That's correct. To the best of my  
15 recollection I agreed with the idea that we needed  
16 a contractor to help with grassroots education,  
17 communication.

18 I agreed with that idea that we needed a  
19 contractor, but I wasn't involved in considering  
20 various contractors and who would pick, and I was  
21 not involved in the choice of Oliver Robinson  
22 Foundation.

23 Q. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED] [REDACTED]

2 [REDACTED]

3 Q. Did you review the contract prior to its  
4 execution?

5 A. You know, Mr. Martin, I may have. I may  
6 have. [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Q. [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED]

24 Q. Did you provide any edits to the  
25 contract that you recall?

1 A. If I looked it over, there is a good  
2 chance I suggested some change somewhere. It's  
3 just kind of my nature, but I do not remember  
4 having suggested any changes; but it's quite  
5 possible.

6 Q. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] [REDACTED] [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 Q. If I show you the final version of the  
17 contract, do you think you'd be able to look at  
18 that and remember what edits you may have suggested  
19 or what questions you may have had about it?

20 A. If I read the contract that something  
21 might come off the page to me that I said oh, yeah,  
22 I remember suggesting that. So I'll be happy to  
23 look at it, but I don't remember.

24 Q. I'm going to hand you what has been  
25 previously marked as Grand Jury Exhibit 3 [REDACTED]



1 and just ask you to look over that.

2 A. Okay.

3 Q. So was that the contract that you  
4 mentioned that you reviewed prior to its execution?

5 A. I think I remember reviewing it.  
6 Reading it over now it doesn't help me remember  
7 that I did or not, [REDACTED]

8 [REDACTED]

9 Q. [REDACTED]

10 [REDACTED]

11 Q. And having read the contract, does any  
12 edits that you may have suggested jump out to you?

13 A. No. It has a lot of material in it  
14 about ethics and about, you know, that none of this  
15 is intended to be a contribution to anybody, and  
16 nobody is allowed to pass anything along.

17 That's information that had I reviewed  
18 this, I would have looked for it, you know, if I  
19 knew, you know; but I don't have the expertise to  
20 supply that.

21 Q. Why would you have looked for that sort  
22 of language in that contract?

23 A. Well because Oliver Robinson was a  
24 member of the legislature.

25 Q. When a member of the legislature is

1 hired as a consultant by a law firm, it raises some  
2 ethical issues, doesn't it?

3 A. We want to be sure that it's done right  
4 because the law allows you to do it, but you have  
5 to do it right.

6 Q. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 Q. What sort of due diligence did you do or  
6 are you aware of was done before Oliver Robinson  
7 Foundation was hired to do this work?

8 You know, by due diligence I mean on  
9 Oliver Robinson's ability to do the work.

10 A. I'm not aware of any evaluation of that  
11 before -- I'm sorry. I see what you mean.

12 I'm not aware of anything. You mean  
13 like when someone first thought well why don't we  
14 hire, you know, this contractor.

15 Are you saying between then and the time  
16 you hired them or something?

17 Q. Well, you were about to spend your  
18 client's money on Oliver Robinson Foundation to do  
19 this work -- communications work, and you know, I  
20 would think that the law firm would be interested  
21 in knowing whether Oliver Robinson could actually  
22 do the work he was being hired to do.

23 A. Oh, that. I do not know of any kind of  
24 evaluation. I don't know how they got to the  
25 decision. I do not know how they got to the

1 decision of Oliver Robinson is the right guy for  
2 the job. I don't know that.

3 Q. Okay, fair enough.

4 Are you aware that shortly before that  
5 contract was signed or shortly after that contract  
6 was signed, I'm sorry, that Oliver Robinson  
7 appeared and made comments before the Alabama  
8 Environmental Management Commission?

9 A. I know that he did that. I don't know  
10 when it was exactly just looking at the date here,  
11 but I know that he did that.

12 Q. Were you aware of it at the time it was  
13 happening?

14 A. No. [REDACTED]  
15 [REDACTED] ■  
16 [REDACTED]  
17 [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED] [REDACTED] [REDACTED]  
25 [REDACTED]

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14		[REDACTED]
15	[REDACTED]	
16	[REDACTED]	
17	[REDACTED]	
18	[REDACTED]	
19	Q.	[REDACTED]
20	[REDACTED]	
21	[REDACTED]	
22	[REDACTED]	[REDACTED] [REDACTED]
23	[REDACTED]	
24	[REDACTED]	
25	[REDACTED]	[REDACTED]

- 1 A. [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED] [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED] [REDACTED]
- 7 [REDACTED]
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- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
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- 17 [REDACTED]
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- 22 [REDACTED]
- 23 [REDACTED] [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED] [REDACTED] [REDACTED]



1 [REDACTED]

2 Q. Were you aware of letters that were  
3 [REDACTED] put on Oliver Robinson's  
4 letterhead, signed by Oliver Robinson and sent to  
5 Lanier Brown and Lance LeFleur?

6 A. I am aware of them now, but at the time  
7 I was not aware of them.

8 Q. When did you become aware of them?

9 A. To be honest, I think it was when you  
10 started asking about them.

11 Q. Okay, fair enough.

12 Were you aware that Oliver Robinson  
13 prior to appearing before the Commission met with  
14 two members of the Commission?

15 A. At the time I was not. I have learned  
16 that since.

17 Q. And when did you learn that?

18 A. Same answer. When you started asking  
19 about it.

20 Q. After we issued subpoenas and started  
21 asking questions?

22 A. Yeah, and in the course of reviewing,  
23 you know, documents and stuff to be responsive to  
24 the subpoena.

25 Q. [REDACTED]

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED] [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED] [REDACTED]
- 7 [REDACTED]
- 8 Q. [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED] [REDACTED] [REDACTED]
- 11 [REDACTED] [REDACTED]
- 12 [REDACTED] [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED]
- 15 Q. [REDACTED]
- 16 [REDACTED] [REDACTED]
- 17 [REDACTED] [REDACTED]
- 18 [REDACTED] [REDACTED]
- 19 [REDACTED] [REDACTED]
- 20 [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23 [REDACTED]
- 24 [REDACTED] [REDACTED]
- 25 [REDACTED] [REDACTED] [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 Q. [REDACTED]

8 [REDACTED]

9 A. [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 Q. Let me show them to you so there is no  
14 misunderstanding of what we're talking about.

15 A. Okay.

16 Q. I'm showing you what's been previously  
17 marked as Grand Jury Exhibit 4 [REDACTED] and Grand  
18 Jury Exhibit 5 [REDACTED].

19 A. Okay.

20 Q. Just so we're clear, the record is clear  
21 and everybody understands, are those the two  
22 letters that you and I have been talking about [REDACTED]

23 [REDACTED] and

24 Oliver Robinson signed? Is that your  
25 understanding?

8 [REDACTED]

9

10	Q.		
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11 [REDACTED]

12

13 [REDACTED]

14

15 [REDACTED]

16 [REDACTED]

17

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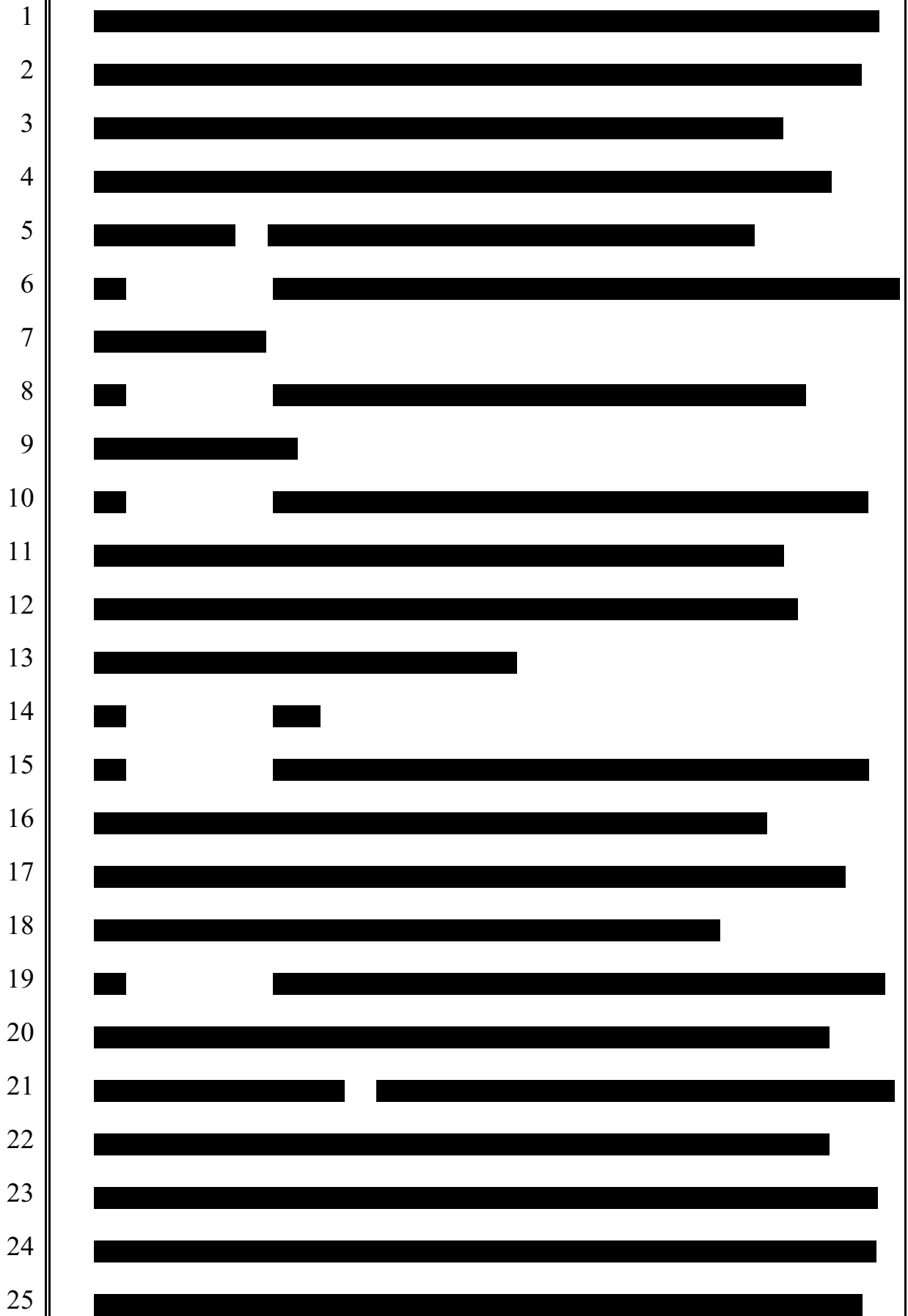
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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 Q. To change gears a little bit, we've  
8 talked about your knowledge of the contract that  
9 Balch had with Oliver Robinson Foundation.  
10 What was your personal involvement with  
11 Oliver Robinson's execution of that contract on  
12 behalf of Balch?  
13 A. I had no direct personal involvement.  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 Q. Earlier you talked about the benefits to  
7 the client of heading off this action by the EPA  
8 early in the process. Just a couple more  
9 questions.

10 What is the benefit to Balch & Bingham  
11 in successfully representing its client in relation  
12 to this matter with EPA?

13 A. Well we earn legal fees working on a  
14 client's legal matter and providing them with legal  
15 advice.

16 Q. Let me ask some questions. I said I had  
17 two, but I have more.

18 Do you have any idea of the amount of  
19 legal fees that Balch has earned from Drummond, ABC  
20 Coke on this matter over the years?

21 A. I do not. I don't. I mean, it would be  
22 a significant amount. I don't know the amount.

23 Q. What do you typically charge per hour?

24 A. My billing rate is \$490 an hour, and  
25 that's only because I refused to let the firm raise

1 it higher. Clients would pay more.

2 Q. [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 Q. Any idea of how many hours have been  
6 expended by Balch attorneys and other personnel on  
7 the matter of the years?

8 A. I don't. It would be quite a number of  
9 hours.

10 Q. You mentioned the legal fees that the  
11 firm earns. How else does Balch benefit from  
12 successful litigation against EPA in this matter?

13 A. Well, you know, we represent many  
14 different clients. Many different clients in  
15 Alabama and really around the country.

16 We were invited to represent Drummond  
17 ABC Coke because of our environmental expertise.  
18 They have good lawyers that do all kinds of things  
19 for them. They didn't have anyone who was capable  
20 of helping them with complicated environment stuff.

21 So, you know, when you do a good job for  
22 a client, and you help them deal with a complicated  
23 problem in a way that they're satisfied, you know,  
24 you hope that that leads to other clients  
25 recognizing your skill and hiring you to do that

1 for them.

2 Q. So a reputational effect of being  
3 successful?

4 A. Sure.

5 Q. Plus not only might you earn business  
6 from other clients, you might get more from  
7 Drummond?

8 A. Sure. Oh, yeah, we're always -- we want  
9 to be their lawyer whenever they need a lawyer.

10 Q. Any other ways the firm benefits?

11 A. Well --

12 Q. Are those the main ones?

13 A. Yeah. The only thing I would mention is  
14 and this is relevant in this case. EPA's theory  
15 that they were employing to say that ABC Coke was  
16 potentially responsible was a theory that was new.  
17 It had not been used. It was used in one other  
18 situation in the country, and that theory had the  
19 potential to effect lots of different parties in  
20 many other sites.

21 So I mention it because there would be  
22 other lawyers from around the country who would be  
23 kind of touching base with me to say what's going  
24 on with that case and how is that theory going  
25 because it was a matter of concern among lawyers

1 around the country.

2 Q. So defeating that issue would have  
3 benefitted the firm. Again, I guess that's sort of  
4 related to its reputation and business generating.

5 A. I don't mean this to sound hokey, but I  
6 thought the theory was rubbish, and I thought it  
7 had the potential to actually turn the Superfund  
8 law kind of on its head.

9 So I actually was concerned about the  
10 theory from a practitioner's perspective and from  
11 the perspective of somebody who thinks Superfund  
12 had its place, has its place today, and will have  
13 its place in the future if it's not abused, and I  
14 felt like it was being abused.

15 So I had kind of a concern from -- you  
16 know, I mean, I've been doing this a long time.  
17 I'm going to be retired in a while.

18 I sometimes think of from a legal  
19 perspective the over-arching legal good, and I  
20 thought this was a bad plan.

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

- 1 A. [REDACTED]
- 2 [REDACTED] [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED] [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
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- 19 [REDACTED] [REDACTED]
- 20 [REDACTED] [REDACTED]
- 21 [REDACTED]
- 22 A. [REDACTED]
- 23 [REDACTED] [REDACTED]
- 24 [REDACTED]
- 25 [REDACTED]



1 [REDACTED]

2 [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 MR. MARTIN: Do the Grand Jurors have  
6 any questions?

7 A JUROR: I have one question, and I may  
8 have misunderstood.

9 Did you say earlier that you didn't know  
10 that your firm had hired Oliver Robinson until  
11 after the fact?

12 A. That's a good question, but if I said  
13 that, I didn't mean it.

14 What I meant was that I didn't know that  
15 the decision to hire him had been made. I wasn't  
16 involved in that decision, and I learned of it  
17 after it had been made.

18 I don't know in relationship to the  
19 contract, the date of the contract, which I would  
20 say is the day that that foundation got hired.

21 I'm certain that I learned of it before  
22 that contract was signed because I believe I  
23 remember looking at the contract as it was being  
24 prepared.

25 THE JUROR: That's why I was asking,

1 because I was thinking if you looked at the  
2 contract then, you would have known.

3 A. Right, yeah, but I didn't -- I guess  
4 what I was trying to say is I didn't -- he had been  
5 hired when I learned of it. I first learned of it  
6 after he had -- I'm sorry. Let me say it again.

7 The decision to hire him had been made  
8 is what I meant.

9 Q. You mentioned in response to her  
10 question that you consider the date of the contract  
11 the time, the date that Oliver Robinson Foundation  
12 was hired.

13 A. Uh-huh (Affirmative).

14 Q. I got to follow up because there is two  
15 dates in this contract, if you noticed.

16 A. Okay.

17 Q. There is the date that it was signed,  
18 which was February 16, 2015.

19 A. Right.

20 Q. But it says it has an effective date of  
21 December 1, 2014.

22 A. That's a good point.

23 Q. So which date are you referring to?

24 A. Well, a contract for services often, you  
25 know, refers to you started work on this previous

1 date, and that's what that is.

2 So what date was I referring to? I  
3 don't know. If we're trying to place the  
4 conversation where I learned about the decision to  
5 hire Oliver Robinson in between those two dates,  
6 I'm not sure.

7 December 1, I don't remember if that's  
8 like when they started work on December 1, or is  
9 that was -- I don't remember why that date is  
10 there.

11 But since I've muddied the water so well  
12 let me say it again. When I learned that Oliver  
13 Robinson had been chosen, I had not previously  
14 known that he, you know, was involved or being  
15 considered.

16 So learned that he had been chosen, and  
17 then later they showed me the draft contract and  
18 asked me to look it over, I'm pretty sure, and then  
19 the draft contract got finalized and executed.

20 Q. So that would have been sometime between  
21 roughly December 1, 2014 and February 16, 2015 when  
22 you learned that he had been hired or chosen?

23 A. You know, that makes sense but, you  
24 know, I don't know what the December 1 date is.  
25 A lot of times in contracts, you know, you will

1 recite the day when someone was perhaps even chosen  
2 as the beginning date of the contract, and then  
3 there is the day they started working, and then  
4 there's the date of the contract.

5 I don't know what December 1 is. I  
6 don't know why that is recited. So I can't say.

7 Q. So I guess it's fair to conclude, and  
8 you tell me, Oliver Robinson apparently was already  
9 doing work at the time that you learned that he had  
10 been chosen?

11 A. I don't know that that's true.

12 Q. Well, I'm just going by the language of  
13 your contract where it says the effective date of  
14 December 1.

15 A. Yeah, it could be, but I don't know that  
16 it's true. I just don't remember whether he had  
17 actually begun working when I first learned about  
18 him being chosen. Just don't know that.

19 Q. Well if Balch paid Oliver Robinson back  
20 to include December 1, you would think he had been  
21 working.

22 A. I would expect that. I would expect  
23 that, yes.

24 MR. MARTIN: Any other questions?

25 A JUROR: I do. The two letters that

1       you reviewed that were from Oliver Robinson [REDACTED]  
2       [REDACTED] they were to the AEC,  
3       is that correct? Those two letters that you said  
4       you questioned him about, and that Mr. Martin  
5       showed you those two letters?

6       A.               Right. Well, I'm looking at them.

7               THE JUROR: Oh, you still have them  
8       there?

9       A.               Yes.

10              THE JUROR: Do one or both or neither  
11       say in the first sentence or references himself as  
12       a representative, a state representative?

13       A.               Okay. Well, the letters are on his  
14       letterhead.

15              THE JUROR: Right.

16       A.               The February 6 letter addressed to  
17       Lanier Brown, the second paragraph begins with  
18       (Reading) "As a State Legislator and representative  
19       of a district adjacent to North Birmingham".

20              So there is a reference there.

21              THE JUROR: Both letters?

22       A.               That's the first letter, and then the  
23       March 4 letter addressed to Lance LeFleur, again  
24       it's on his letterhead.

25              I see no reference to him being a

1 legislator in the text of the letter.

2 THE JUROR: One other question. The  
3 letterhead, is it the letterhead for him as a state  
4 legislator or his Partner for Progress or as  
5 Robinson & Robinson? What's the letterhead say?

6 A. It is the letterhead of his state  
7 legislature job. It's Representative Oliver  
8 Robinson, Jr. letterhead.

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]

2 THE JUROR: Or say that he was a state  
3 legislator in the letter. That would come from Mr.  
4 Robinson himself?

5 A. Could have, yeah. [REDACTED]

6 [REDACTED]

7 Q. What significance does it have to you  
8 that it's on letterhead? On the House of  
9 Representatives letterhead?

10 A. Well, I mean, to me it doesn't have any  
11 significance in the sense of, you know, there being  
12 anything wrong with it, you know, [REDACTED]

13 [REDACTED]

14 Q. [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 So I don't see any red flags from that.  
19 The significance into the addresses, the people  
20 that receive it. You know, they know Oliver  
21 Robinson, and they know him to be a state  
22 representative.

23 So I don't know if it would have been  
24 any different if he had written it on his personal  
25 letterhead. You know, they would have still known

1       they're talking to Oliver Robinson.

2                   So as it relates to how those people  
3       perceive or concern, I can't say that they would  
4       have said -- that they would have a different  
5       perception if he had put it on some other  
6       letterhead.

7       Q.           That wasn't the question I was really  
8       asking was what they thought about it or anything,  
9       and I'm sure they knew he was a state legislator  
10      because it was written in the letter, if nothing  
11      else.

12      A.           Oh, they know.

13      Q.           You know, I guess my question was just  
14      when you see a person writing a letter on Alabama  
15      House of Representatives letterhead, does that  
16      indicate to you that they're a member of the House  
17      of Representatives and speaking as such?

18      A.           Well, sure, and the point I guess I'm  
19      making is that they do that -- they carry that with  
20      them 24-7 wherever they are.

21                   That's why the ethics laws kind of say  
22      what they're allowed to do and not allowed to do  
23      because they can't avoid being -- once they're  
24      elected, they are, and it doesn't matter whether  
25      they use a letterhead or not. It doesn't matter



1 whether they wear a suit or not. They're still a  
2 representative. So they have to abide by the  
3 ethics laws.

4 Q. I wholeheartedly agree with that.

5 MR. MARTIN: Any other questions?

6 A JUROR: For Lance, how long have you  
7 known him?

8 A. I first met Lance LeFleur when he became  
9 Director. I had met his wife who worked in state  
10 government also before I met Lance. So I knew of  
11 him.

12 He became Director in the Bob Riley  
13 administration. Probably pretty early in the Bob  
14 Riley administration.

15 So he's been Director for maybe 10  
16 years. No, -- I don't know. Eight years? Quite a  
17 while.

18 MR. MARTIN: Any other questions?

19 A JUROR: I had a question.

20 Mr. Robinson was hired as a consultant  
21 [REDACTED]. Oliver Robinson, was he the contract  
22 -- was as a consultant through you-all?

23 A. Well, the work that we hired the Oliver  
24 Robinson Foundation to do was work in the nature of  
25 consulting. That's what consultants do.

1                   It was to provide us with help  
2                   communicating and educating. Providing information  
3                   to, collecting information from folks in the  
4                   Tarrant area.

5                   [REDACTED]  
6                   [REDACTED]                   [REDACTED]  
7                   [REDACTED]  
8                   [REDACTED]  
9                   [REDACTED]  
10                  [REDACTED]  
11                  [REDACTED]

12                  The work that was to be done is work  
13                  that in you need to have some local knowledge. You  
14                  need to know who to talk to. Who to find out  
15                  things from.

16                  So when you need help of this type you  
17                  go looking for someone in that area, you know, and  
18                  there usually are people who are in the business of  
19                  helping people communicate well. So you're looking  
20                  for that kind of person.

21                  I don't know how we got to the Oliver  
22                  Robinson Foundation, but the people who did the  
23                  work were people who had experience in that kind of  
24                  stuff in that area.

25                  THE JUROR: And leading up to that if he

1 had the experience in that -- I know you said as a  
2 stated practice that sometimes they ask the lawyers  
3 to draft the letter for him.

4 A. Uh-huh (Affirmative).

5 THE JUROR: But in this instance with  
6 him not being the consultant would they not have  
7 their other outside people draft the letter?

8 A. No. There is a blend between kind of  
9 like how things get done, and now I'm speaking kind  
10 of generically.

11 We hire a lot of different consultants  
12 to help us provide legal advice. We may hire  
13 technical consultants. We may hire people, you  
14 know, who have experience and we want advice from  
15 them.

16 So in all those situations some of those  
17 people are really good at writing stuff, and I  
18 immediately tell them well you're writing this.  
19 I'll review it to see if I got any issues or  
20 questions about it, but you're right.

21 In other situations somebody may be  
22 really good at, you know, let's just say chemistry.  
23 Dealing with chemical problems, but they can't  
24 write a letter to their mom. I mean, they're not  
25 any good at writing.

1           So in that situation, say, all right,  
2       Dr. Jones, you're the greatest chemist in the  
3       world, but we'll write things, and you read it and  
4       see if we have captured the truth.

5           So it's a blend, [REDACTED]  
6       [REDACTED]  
7       [REDACTED]  
8       [REDACTED]  
9       [REDACTED]  
10       [REDACTED]

11       [REDACTED]       So it would kind of go both ways.

12           MR. MARTIN: Any other questions?

13           (No response)

14           MR. MARTIN: Thank you. You're excused.

15           (Whereupon, the witness exited the Grand  
16       Jury Room at approximately 3:25 p.m.)

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18                       END OF PROCEEDINGS

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## CERTIFICATE

I, Margaret Johnson, a Certified Court Reporter for the State of Alabama, having sworn to keep secret the testimony given before the Grand Jury, hereby certify that I am the Court Reporter who made the stenomask notes of the foregoing proceedings at the time and place stated in the Caption herein; that I later reduced my stenomask notes into typewriting; and that the foregoing pages contain a full, true, and correct transcript of the testimony given before the Grand Jury on that occasion.

I further certify that I am in no way related to nor employed by any of the Grand Jurors, the witness, or the United States Attorneys conducting the examination of the witness; and that I have no interest in the outcome of this matter.

Margaret Johnson

Alabama Certified Court Reporter #488